

Satish Chopra Vs. Hdfc and anr

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Court : Delhi

Decided On : Aug-13-2014

Judge : G.P. Mittal

Appellant : Satish Chopra

Respondent : Hdfc and anr

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Pronounced on:

13. h August, 2014 + IA No.12655/2014 (Order XXXIX Rules 1&2 CPC) in CS(OS) 2041/2014 SATISH CHOPRA Through: Plaintiff Mr. Ranjit Singh, Advocate versus HDFC & ANR Through: Defendant Mrs. Pallavi Deepika, Advocate for D-1. Mr. Rakesh Mukhija, Advocate for D-2. CORAM: HON'BLE MR. JUSTICE G.P. MITTAL1 The case of the Plaintiff is that with his hard work, he had established a company, namely M/s. Haryana City Gas Distribution Limited, having its registered office at E-71, SKN Office, South Extension Part-1, New Delhi and its corporate office at A-107, Sushant Lok Phase-I, Sector 44, Gurgaon, Haryana.

2. By virtue of this application, the Plaintiff seeks following relief:

(i) Restrain Defendant no.1 from allowing/resuming the operation of current a/c bearing No.04402020001733 in HDFC Bank Branch Naraina, New Delhi during the pendency of the present suit.

3. It is averred that out of love and affection, Defendant no.2, who is the real brother of the Plaintiff was appointed by him as an Additional Director of the Company. Later on, due to envy and greed, Defendant no.2 cheated the Plaintiff and fraudulently opened Saving Bank Accounts with Defendant no.1 (HDFC Bank, Naraina Industrial Area, New Delhi), one of them in the name of the Company being Current A/c bearing no.04402020001733 to be exclusively operated by him without any valid resolution allegedly passed by all the Directors of the Plaintiffs Company. It is averred that the Plaintiff and his son Karan Chopra, who are also Directors of the Company were not given any notice of the alleged meeting dated 18.12.2011 as relied upon by Defendant no.2 authorising him to open the Bank Account.

4. It is also stated that in fact, no meeting of the Board was possible on 18.12.2011 as the companys office at E-71, SKN Office, South Extension Part I, New Delhi was lying sealed when the alleged board meeting authorising Defendant no.2 to open the impugned bank account had taken place.

5. It is further the case of the Plaintiff that when the Plaintiff came to know about fraud committed by Defendant no.2, he confronted Defendant no.2 about the same and the Plaintiff was restored to the position of Managing Director of the earlier said company. MOU dated 28.10.2011 was executed between the Plaintiff and Defendant no.2 wherein it was reiterated and reaffirmed that the sole management of M/s. Haryana City Gas Distribution Limited shall continue to be with the Plaintiff only.

6. It is alleged that Defendant no.2 illegally started siphoning off funds in huge amount through himself, his wife and his son in his account with Defendant no.1 which were deposited by the company franchisees towards the company.

7. It is urged that there were several litigations between the parties in civil and criminal courts as also before the Company Law Board (CLB). In some of the orders passed by the Delhi High Court, all the franchisees were required to deposit their respective outstanding amounts in the company bank account bearing no.1522002100031636 at Punjab National Bank, Rajendra Place, New Delhi. However, Defendant no.2 in order to circumvent and in utter violation of the

directions passed by the CLB and Delhi High Court, illegally received money from one of the CNG operator of the Plaintiff company by depositing the same in the impugned bank account opened by Defendant no.2 in Defendant no.1 bank.

8. It is the case of the Plaintiff that there were several petitions filed by the parties before the CLB. Defendant no.2 withdrew his petition as he had ceased to be a Director by operation of law as per Section 260 of the Companies Act, 1956 on 23.05.2014. It is averred that thereafter, in the meeting of the Board of Directors of the aforesaid company, it was duly agreed that the impugned bank account in HDFC Bank, Naraina Branch should be closed immediately. It is averred that the Plaintiff informed Defendant no.1 about the fate of the petitions before the CLB and regarding decision taken in the earlier said Board meeting. It is averred that the operation of the account was frozen by Defendant no.1, whereupon Defendant no.1 bank placed a condition of debit freeze of the impugned bank account asking the Plaintiff and Defendant no.2 to provide a copy of the decision on Kapil Chopras application within 15 days, failing which Defendant no.1 Bank shall restore the operation of the impugned bank account. It is urged that Defendants no.1 and 2 are hand in gloves with each other and Defendant no.1 bank is willing to re-operate the companys bank account at the behest of Defendant no.2 which is illegal.

9. The grant of injunction is opposed by the learned counsel for the Defendant no.2. The learned counsel for Defendant no.2 urges that the impugned bank account was validly opened on the basis of a valid Board Resolution. It is thus, prayed that the Plaintiff is not entitled to get the impugned account of the company frozen. It is also urged that the Plaintiff has not impleaded M/s. Haryana City Gas Distribution Limited, who was a necessary party to the proceedings and thus, the Plaintiff is not entitled to the grant of injunction.

10. On the basis of the material placed on record, following facts are prima facie established:(i) Although the bank account was opened in pursuance of the alleged resolution dated 18.12.2011, as per MOU dated 28.12.2011 entered into between the Plaintiff and Defendant no.2, Plaintiff was given the sole management and control of the Company; (ii) Although Board Resolution permitting Defendant no.2

to open the impugned bank account was allegedly passed on 18.12.2011, the documents on record reveal that the premises of the company where the board meeting was allegedly held were sealed on 09.12.2011 and the seal was temporarily opened in compliance of the order of the Supreme Court only on 10.01.2013. Thus, no board meeting could have possibly taken place on 18.12.2011; (iii) In certain proceedings pending before the CLB between the Plaintiff and Defendant No.2, it was ordered on 29.03.2012 that the money received by the company from its franchisees shall be deposited in the bank A/cs of the company at PNB and State Bank of Patiala; (iv) Similarly, in an OMP filed by one of the franchisees of the company, the Delhi High Court passed an order dated 06.05.2013 holding that the franchisee should deposit the outstanding amounts from 06.05.2013 to 22.07.2013 in only PNB A/c of the company; (v) Also, in another OMP filed by the company towards its several other franchisees, an order dated 15.05.2013 was passed by the Honble Delhi High Court directing the franchisees to deposit all outstanding amounts in the companys PNB Bank A/c from 15.05.2013 to 30.05.2013; (vi) In order dated 27.01.2014 in the first OMP, the Delhi High Court observed that there are several payments made by the franchisee which are clearly in violation of the order dated 06.05.2013 passed by the court. Same is also reflected from the statement of accounts annexed; (vii) It is also borne out from the documents placed on record that several other bank accounts have been opened by Defendant no.2 with Defendant no.1 in acute urgency which reflects about the conduct of Defendant no.1; (viii) Certain amounts were got deposited by Defendant no.2 from certain franchisees in the impugned bank account in utter violation of the order passed by the Delhi High Court; (ix) The earlier stated order passed by the CLB and Delhi High Court would impliedly indicate that the bank account bearing no.1522002100031636 with PNB was the companys preferred account; and (x) A perusal of the statement of account placed on record further reveals that large sums of money were withdrawn by Defendant No.2, his wife Rati Chopra and his son Rahul Chopra on 29.08.2013, 09.10.2013, 10.10.2013 and 29.10.2013 from the companys bank account with Defendant no.1.

11. In my view, the Plaintiff has a prima facie case in his favour. Balance of convenience also lies in freezing the impugned bank account as the bank account

recognised by Delhi High Court/CLB for the purpose of transactions and deposits of the amounts by the franchises is admittedly Account No.1522002100031636 with Punjab National Bank, Rajendra Place Branch.

12. Thus, on the basis of tentative conclusion and without expressing any opinion on the merits of the case, Defendant No.1 is directed to freeze the operation of the impugned current bank a/c no.04402020001733 in its Branch at Naraina, New Delhi till the next date of hearing. (G.P. MITTAL) JUDGE AUGUST13 2014 vk

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